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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Opposition of KMC Telecom, Inc. to Direct Case
(CS Docket No. 96-160)

Dear Mr. Caton:

Enclosed for filing please find an original and six (6) copies of the Opposition of KMC Telecom, Inc. to Direct Case.

Please time and date stamp the additional copy of this document and return it with our courier.

If you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

Eric J. Branfman
Joel deJesus

Attorneys for RCN Telecom Services, Inc.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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APR 2 5 1997

Federal Communications Commission
Office of Secretary

In the Matter of	)	
	)	CC Docket No. 96-160
Puerto Rico Telephone Company's New Expanded Interconnection Tariff	)	

OPPOSITION OF
KMC TELECOM, INC.
TO DIRECT CASE

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April 25, 1997

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SUMMARY

Puerto Rico Telephone Company ("PRTC") has not adequately responded to the Commission's requests for information, nor has it provided adequate support for the rates and terms of service in its Virtual Expanded Interconnection Tariff.

In fact, there are major problems with PRTC's tariff. First, PRTC attempts to implement a federal income tax gross-up to its return even though it pays no federal income tax. Second, PRTC's use of an 11.25% cost of capital is excessive given that PRTC is wholly owned by a government agency whose only source of capital is debt with interest rates lower than 11.25%. Third, PRTC unlawfully proposes to subject the availability of virtual collocation to the availability of space and PRTC's own reservation of space for future use.

Because of these and many other flaws in PRTC's tariff and analysis, the Commission should require PRTC to refile its tariff with necessary changes and better supporting documentation. In addition, because PRTC has failed to comply with many of the Commission's requests for information based on its inexperience in providing expanded interconnection, the Commission should order that this proceeding be reopened for further analysis of PRTC's rates once PRTC has had an opportunity to gain such experience.

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OPPOSITION OF KMC TELECOM, INC.
TO DIRECT CASE

Pursuant to ¶ 110 of the Commission's "Order Designating Issues for Investigation," issued on March 11, 1997 in CC Docket Nos. 96-185, 96-165, and 96-160 ("Investigation Order"), KMC Telecom, Inc. ("KMC") through its undersigned counsel respectfully submits its opposition to the Direct Case submitted by Puerto Rico Telephone Company ("PRTC") on April 10, 1997. As discussed below, there are numerous flaws in PRTC's tariff for expanded interconnection, and PRTC's Direct Case fails to substantiate significant aspects of the tariff. Accordingly, the Commission should order that PRTC revise its tariff in significant ways and provide further support for its tariff. The Commission should also order that this proceeding be reopened within a reasonable period of time after PRTC obtains actual experience in providing expanded interconnection.

INTRODUCTION

KMC is a Delaware corporation, with offices located at 1545 Route 206, Suite 300, Bedminister, NJ 07921. KMC has applied for and received certification to provide interexchange and local exchange service in the Commonwealth of Puerto Rico and in a number of states. KMC intends to install fiber optic communication networks in Puerto Rico and in a number of states and expects to offer a wide range of high quality digital local access and private line services to communications-intensive businesses and government end users. KMC is currently engaged in an arbitration proceeding with PRTC before the Puerto Rico Telecommunications Regulatory Board under Section 252 of the Communications Act of 1934.

On May 6, 1996, PRTC filed its expanded interconnection tariff. After the Commission cited numerous issues for investigation in its Investigation Order, PRTC submitted its Direct Case which purports to justify both the rates and various terms of service underlying the tariff. As discussed below, however, this Direct Case fails to resolve problems with many significant aspects of PRTC's tariff.[1]

DISCUSSION

I. PRTC Should Not Be Allowed To Apply Any Federal Income Tax Gross-Up.

In response to ¶ 60 of the Investigation Order, PRTC states that it applies the gross-up factor for federal income taxes to the entire return for the collocation rate, but because it makes no allowance for interest expenses, PRTC claims that the effect is to apply the federal income tax gross-up on only the equity portion of the return. Direct Case at 8. PRTC, however, ignores the fact that no tax gross-up should apply to *any* part of PRTC's return because PRTC pays no any federal income tax.

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[1] It should be noted that, given the limited time in which to review PRTC's Direct Case, the various flaws in PRTC's tariff which are discussed below should not be viewed as an exhaustive list of the problems with PRTC's tariff. KMC's failure to raise an issue in this opposition should not be deemed a waiver of that issue, and KMC reserves its right to raise additional issues in the future at appropriate points in this proceeding.

Based upon arguments raised by PRTC in the arbitration proceeding, KMC understands that the PRTC's claimed ability to impose a federal income tax gross-up is based on a letter ruling by the Common Carrier Bureau dated July 1, 1985. In 1985, PRTC asked that the Commission approve a special accounting procedure that would allow PRTC to gain the benefits of a special tax credit under Section 936 of the Internal Revenue Code, which was intended to promote economic development in Puerto Rico. The Bureau approved that accounting procedure based on a specific set of facts, including among others that:

1) the statutory purpose of Section 936 is to stimulate development in Puerto Rico;

2) PRTC was a member of the National Exchange Carrier Access ("NECA") access pool; and

3) therefore, if the benefit of the Section 936 tax credit were reflected in interstate access charges, this benefit would be passed through to all ratepayers of NECA member companies, and not necessarily to Puerto Rico consumers.

This 1985 letter order, however, is inapplicable to current circumstances. In the context of this proceeding, PRTC's customers will not be the NECA member companies but interconnectors that will be locating businesses in Puerto Rico. To effectuate the intent of Section 936, therefore, the benefit of the Section 936 tax credit should be reflected in rates for unbundled elements because such benefits would be passed through to either the businesses investing in Puerto Rico, their Puerto Rican customers, or both.

This result is also necessary to effectuate the Commission's goal of promoting competition. In 1985, PRTC held a legal monopoly, and therefore its receipt of compensation (from ratepayers of other NECA pool members) for federal income tax payments that it did not make would not disrupt a competitive balance. Today, by contrast, Congress has mandated competition in the local exchange market. PRTC's receipt of compensation (from KMC and other CLECs) for federal income tax payments that PRTC does not make would disrupt the efforts of Congress and the FCC to establish a "level playing field" for competition between PRTC and CLECs such as KMC.

In short, PRTC's practice of imposing a gross-up for federal income taxes that it does not pay is obsolete and anticompetitive, particularly in this context in which it would be recovering a windfall at the expense of its competitors.[2] Accordingly, it should be applied to neither the equity component nor the debt component of PRTC's rate of return.

II. The 11.25% Cost of Capital Used by PRTC Is Excessive.

PRTC is unique among LECs in that PRTC is wholly owned by the Puerto Rico Telecommunications Authority (PRTA), which is a government agency. PRTA itself has no outstanding stock, but rather uses debt issuances as its sole source of capital. These bonds have been issued at interest rates well below 11.25%.

Under these circumstances, the standard 11.25% cost of capital should not apply to PRTC. PRTC has no publicly traded equity, and its cost of debt is considerably lower than 11.25%. Authorizing such a high cost of capital component for PRTC serves only to inflate PRTC's rates and to overcompensate PRTC for the actual business risks it faces. Such a high cost of capital is

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[2] On April 21, 1997, KMC requested that the Common Carrier Bureau clarify that the 1985 letter is applicable only for purposes of determining PRTC's interstate revenue requirement for access charges based upon the specific facts considered by the Bureau in 1985, and does not represent the Bureau's position as to the appropriate method of determining PRTC's "cost" in the context of arbitration proceedings under Section 252(d) of the Communications Act of 1934.

especially egregious in this case because the interconnectors that must compete with PRTC for business will be forced to pay for this excessive return.

III. PRTC's Proposal To Make Virtual Collocation Subject to PRTC's Own Reservation of Space Is Unlawful.

PRTC repeatedly states that its provision of expanded interconnection will be subject to availability of space. Direct Case at 12, 21-22. In fact, Section 18.3 of PRTC's tariff states that "[i]n determining the availability of space in the conduit system and central office, [PRTC] will reserve for itself the space it requires to meet its obligations to provide communications services." In defense of this policy, PRTC merely asserts that it is appropriate and that the Commission recognized that LECs should not be required to relinquish space reserved for future use.

To the contrary, both the Communications Act and Commission policy prohibit PRTC from subjecting the availability of virtual collocation to the availability of space and PRTC's own reservation of space. Section 251(c)(6) of the Communications Act clearly provides that LECs have a duty to allow physical collocation or, at the very least, virtual collocation when there are technical restrictions or space limitations that bar physical collocation. 47 U.S.C. § 251(c)(6). In the Virtual Collocation Order cited by PRTC in its Direct Case (at 22), the Commission likewise recognized that LECs were required to provide physical collocation or, when space is constrained, virtual collocation. Expanded Interconnection with Local Telephone Company Facilities, CC Docket Nos. 91-141 and 92-222, Report and Order and Notice of Proposed Rulemaking, FCC 92-440, 7 FCC Rcd. 7369, 7407-08 (Oct. 19, 1992). While the Commission recognized that LECs should not be forced to relinquish space reserved for future use or to expand facilities in order to accommodate physical collocation (id. at 7408, ¶ 79), the Commission's determination clearly presumed that virtual collocation could be provided as an alternative to physical collocation. As the Commission stated, requiring LECs to relinquish reserved capacity to accommodate physical collocation "could interfere with the LECs' ability to serve existing ratepayers and might impose considerable and unnecessary expense on the LECs when a virtual collocation alternative can be implemented." Id. (emphasis added). In short, both the Communications Act and Commission policy recognize that virtual collocation can be provided when physical collocation is infeasible, but neither provides, as PRTC suggests, that LECs may deny collocation altogether based upon space limitations.

This was reaffirmed in the Local Competition Order, which was also cited in PRTC's Direct Case (at 22, n.9). In fact, contrary to PRTC's claims, the Commission stated in no uncertain terms:

> We do, however, require that incumbent LECs relinquish any space held for future use before denying virtual collocation due to a lack of space unless the incumbent can prove to a state commission that virtual collocation at that point is not technically feasible. Moreover, when virtual collocation is not feasible, we require that incumbent LECs provide other forms of interconnection and access to unbundled network elements to the extent technically feasible.

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 at ¶ 606 (Aug. 8, 1996) (footnote omitted).[3]

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[3] Numerous state commissions have also recognized that incumbent LECs may not reserve space for future use to the exclusion of new entrants. See, e.g., AT&T Arbitration with GTE, Decision, Dkt. No. 25704, at 34 (Alabama Commission, Feb. 12, 1997); AT&T Arbitration with GTE, Decision, Decision No. 15229, Dkt. No. 96-0329, at 26 (Hawaii Commission, Dec. 12, 1996); AT&T Arbitration with GTE, Decision, Cause No. 40571-INT02, at 19 (Indiana Commission, Dec. 12, 1996); AT&T Arbitration with GTE, Decision, Dkt. No. C-1400, at 27 (Nebraska Commission, Dec. 12, 1996); AT&T Arbitration with GTE, Arbitrators Decision, ARB 5, at Issue 56 (Oregon Commission, Dec. 12, 1996), *aff'd*, Commission Decision (Jan. 13, 1997); AT&T Arbitration with GTE, Arbitrator's Report and Decision, Dkt. No. UT-960307, at 27-28, 32 (Washington Commission, Dec. 11, 1996).

In short, the Commission should strike PRTC's tariff provisions limiting the availability of virtual collocation to the availability of space and allowing PRTC to reserve space to the exclusion of space available for collocation. PRTC's tariff should be revised to reflect PRTC's legal duty to allow collocation, and to the extent PRTC actually experiences a space shortage, PRTC would be free to file a petition (with ample documentation) with the Telecommunications Regulatory Board of Puerto Rico or this Commission for a waiver of that duty.

IV. Rate Issues

In addition to the improper gross-up for federal income taxes not paid by PRTC and the excessive cost of capital, there are several other problems related to how PRTC identifies costs and determines rates for expanded interconnection. The most significant of these concerns are discussed below.

A. PRTC Has Not Supported Its Estimates of Collocation Investments, Direct Capital Costs and Direct Operating Expenses.

PRTC falls short in responding to the Commission's order in the Investigation Order at ¶ 38 that PRTC "fully document and completely explain" how it estimated its collocation investments, direct capital costs and direct capital expenses. With respect to collocation investments, PRTC merely asserts that "[t]he collocation investments were developed by PRTC's network planning department." Direct Case at 5. PRTC provides no explanation of what the network planning department did to quantify those investments or why the methodology chosen by that department was correct.

PRTC does not even attempt to identify direct capital costs. Instead, it calculates so-called "direct capital costs" by "applying a factor to the collocation investments." Direct Case at 5. PRTC references certain workpapers (Workpapers 1, 3 and 4) that seem to suggest that the factors applied to collocation investments to derive "direct capital costs" were derived by dividing total interstate expense by total plant in service. See Direct Case, Exh. 2, Workpaper 4, line A. PRTC, however, neither justifies the calculations used in those workpapers nor explains why it sought to calculate "direct capital costs" indirectly through the use of factors.

In fact, PRTC's calculation of the factors for deriving the so-called "direct capital costs" is flawed. First, while expenses do change somewhat in relation to total investment, the correlation is not necessarily 1 to 1 as assumed in PRTC's calculations. Moreover, by relying on total expenses and total plant in service, PRTC has improperly included various common and shared costs in its calculation of "direct capital costs." Because PRTC claims to have developed loading factors to recover overhead costs (see, infra, at Part IV.D. of this Opposition), PRTC would recover these common and shared costs twice by virtue of the unconventional way in which it calculates "direct capital costs."

Finally, PRTC has not adequately demonstrated the direct operating costs of its expanded interconnection services. PRTC simply states that "[t]he direct operating expense is for maintenance" and then cites to Workpaper 4, line A, column d. Direct Case at 6. Nowhere on Workpaper 4, however, is there an entry for maintenance. Although that workpaper provides the interstate expenses for land & building, central office switch, transmission equipment, and cable & wire facilities, there is no indication that all of those expenses should be directly assigned to collocation customers or that those items entail only maintenance expenses as PRTC claims. Nor does PRTC provide any back-up documentation to support the gross figures included on the workpaper.

In short, PRTC has not explained with any degree of detail the cost components of its expanded interconnection rates. PRTC has at most asserted what these cost components should be without any justification or explanation. The end result will be tremendous uncertainty as to the final charges that will be incurred by individual interconnectors. This uncertainty will in turn chill requests for interconnection with PRTC and hinder the development of a robust market for local telecommunications services. Accordingly, the Commission should require PRTC to file more detailed and better justified cost support for its tariff.

B. PRTC Has Not Properly Accounted for Depreciation.

In response to ¶ 40 of the Investigation Order, PRTC claims that "the depreciable lives for plant is [sic] justified in PRTC's depreciation costs study filed with the Commission on November 16, 1993." Direct Case at 6. In fact, there are significant differences between the depreciation rates and the useful lives outlined in the 1993 Depreciation Study and those used in PRTC's Direct Case. In contrast to the 38-year useful life and negative 27% net salvage listed for buildings in Workpaper 3 in PRTC's Direct Case, the 1993 Depreciation Study states that "[t]he previously established 42 R3 life and curve was used" with a negative 27% net salvage. 1993 Depreciation Study at 8-3 to 8-4. With respect to digital switching, PRTC used a 13-year useful life and a 1% net salvage in Workpaper 3 of the Direct Case, while 1993 Depreciation Study references a 14-year useful life used by PRTC, a 16-year useful life requested by the Commission, and a 3% net salvage. 1993 Depreciation Study at 16-5. PRTC used an 11-year useful life and 8% net salvage for Circuit Equipment in Workpaper 3 of the Direct Case, but the 1993 Depreciation Study provides that a 13-year useful life and 5% net salvage was established for digital circuits. 1993 Depreciation Study at 19-5. Finally, with respect to conduits, PRTC uses a 54-year useful life, while the 1993 Depreciation

Study provides for a 55-year useful life. 1993 Depreciation Study at 29-3. Contrary to PRTC's claims, therefore, the depreciation factors used by PRTC in its Direct Case cannot be justified by the 1993 Depreciation Study because there are too many unexplained discrepancies between the two.

In any event, it is not clear why PRTC would even attempt to rely on its 1993 Depreciation Study for support when PRTC has more current information at its disposal. According to Staff in the Commission's Depreciation Rates Branch, a similar study was conducted in 1996. PRTC's depreciation analysis in its Direct Case is inherently suspect because of its failure to cite to this newer information.

Finally, even assuming that PRTC correctly identified the depreciation factors it used in its Direct Case, it is not at all clear that PRTC uses the depreciation factors correctly. Workpaper 3 of PRTC's Direct Case seems to derive a cost of money by "depreciating" the cost of capital over five years and taking the arithmetic average of those "depreciated" cost of capital percentages. This analysis seems devoid of any real meaning. Although PRTC may be trying to recognize that its actual returns in the future will decrease, such a decrease is the result both of the time value of money and of applying the cost of capital to assets as they depreciate over time; it is not the result of "depreciating" the percentage cost of capital. PRTC provides no explanation of what this deprecation of the percentage cost of capital is supposed to represent. Nor does PRTC explain why it has chosen to depreciate the return over five years instead of the entire useful lives of the various assets. Even if, for the sake of argument, PRTC's methodology of depreciating the cost of capital made sense, such a stunted depreciation schedule would seem to overstate PRTC's cost of capital. It would also imply that all of the investment would be replaced in only five years, which certainly could not be the case.

C. PRTC Has Miscalculated Floor Space Costs.

PRTC has not adequately explained how it will allocate floor space costs. For example, PRTC states that it based its system average square footage price on a sample of 18 central offices and that it only had "relevant information" for those 18 central offices. Direct Case at 10 and 12. PRTC, however, does not explain why it could not obtain this information for all of its central offices, nor does it show that the sample central offices for which it had "relevant information" are representative of the whole system. PRTC does not even explain what it means by "relevant" information. Without further explanation from PRTC, the Commission must assume that PRTC's selective survey was intended to skew the analysis and overstate the average cost of square footage.

Also unexplained is how PRTC arrived at the "common area percentages" that PRTC factors into the analysis to increase the square footage. PRTC claims that "common area percentage" refers to unused portions associated with hallways, stairwells and restrooms and that it should be allowed to charge for those areas needed to access usable space. Direct Case at 11-12. What is remarkable, however, is that so much unusable space exists in PRTC's central offices.[4] As reflected in Workpaper 5 of PRTC's Direct Case, hallways, stairwells, and restrooms account for nearly 50% of the floor space in PRTC's central offices on average and as much as 64% in one office. PRTC either has very inefficient floor plans, is attempting to buttress future claims that it lacks space to allow expanded interconnection, or simply miscalculated the magnitude of the common areas in its central offices.

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4 It is also not clear why PRTC believes that restrooms are necessary for access to usable areas. But without further documentation from PRTC (including detailed floor plans of each central office), KMC cannot speak to the propriety of PRTC's identification of particular costs as common costs.

In any event, PRTC appears to recover such common area costs several times over. In addition to increasing the square footage costs of floor space by a "common area percentage," PRTC also proposes to charge an overhead loading factor, which presumably would cover the same common and shared costs for space. Direct Case at 13. Moreover, as noted supra in Part IV.A of this Opposition, PRTC's proposed method for determining "direct capital costs" associated with expanded interconnection service is to develop factors comparing total expenses to total investment, which, among the many flaws of that analysis, would also include common and shared costs. Finally, PRTC proposes to collect these same costs a fourth time by including them in its estimates of the costs of usable space. As PRTC states,

> Some of each office's square footage is common or shared space. The cost of this shared space must be included in the cost of usable space.

Direct Case at 10, n.8. PRTC should not be allowed to recover the same costs through so many separate mechanisms.

D. PRTC's Calculation of Overhead Loading Factors Is Unsupported.

In response to ¶¶ 71 and 72 of the Investigation Order, PRTC attempts to provide the calculations of the loading factors for each expanded interconnection service rate element and for each point-to-point DS1 and DS3 special and switched access service that PRTC offers. Direct Case at 13-16. But while PRTC lays out its calculations, PRTC at no time explains underlying rationale for the methodologies used. In fact, PRTC's analysis of overhead loading factors is inexplicable.

For example, in calculating overhead loading factors for floor space and cable support, PRTC appears to compare the direct special access revenue requirement to the total special access revenue requirement. Direct Case at 13 and Exh. 6, Vol. 5 at 7. Nowhere does PRTC explain how these revenues bear any relation to common costs incurred. In fact, there is no direct relation and no basis for such loading factors. (And as noted in Part IV.C of this Opposition, supra, the floor space loading factor derived by PRTC seems to duplicate the recovery of common area costs in other provisions of PRTC's tariff.)

Similarly, in deriving the loading factors for each point-to-point DS1 and DS3 special and switched access service, PRTC claims that it compared "the rate for the elements or combination of elements to the unit costs." Direct Case at 15. PRTC again does not explain what, if anything, this has to do with common costs attributable to such services. At most, this analysis appears to measure PRTC's profit margin rather than the common costs that should be recovered as loading factors for special access service.

In fact, PRTC's inexplicable methods for calculating overhead loading factors yield inexplicably large shares of common costs allocated to expanded interconnection and special access customers. The loading factors for expanded interconnection listed in the Direct Case at 13 range from 1.53 to 1.66, which suggest that common costs are 53% to 66% of the direct costs or, in other words, 35% to 40% of total costs. In the Direct Case at 16, PRTC lists a loading factor of 2.1974, which would mean that the common costs associated with that particular service are more than half the total costs of the service. PRTC provides no support for such unprecedented and large common cost estimates, and its loading factor calculations are not reasonable.

V. Issues Related to Terms of Service

Aside from PRTC's efforts to restrict collocation based on its own determination of available capacity, a number of other terms proposed by PRTC for expanded interconnection are also unsupported and should be modified by the Commission to ensure prompt and reasonable access to expanded interconnection.

A. PRTC Has Not Justified Its Proposed Standards of Care.

The Commission was correct in questioning the validity of Section 18.3.2 of PRTC's tariff. Investigation Order at ¶ 86. While Section 18.3.2.(A) provides that PRTC will be liable for property damage caused by its own negligence and for service interruption and interference caused by its own willful misconduct, the indemnification clause in Section 18.3.2.(B) seems to absolve PRTC of any liability (even liability to collocators) arising out of the mere use or presence of the collocator's equipment in PRTC's central office and/or PRTC's own acts or omissions related to installation, maintenance, repair, replacement, presence, use or removal of that equipment. In effect, Section 18.3.2.(B) would eliminate any reasonable assumption of liability by PRTC in Section 18.3.2.(A).

PRTC attempts to justify such provisions merely by asserting that its tariff is reasonable and proper and by claiming that it incurs all of the losses that are the result of the installation, maintenance, or repair of its own facilities. Direct Case at 18-19. PRTC fails to recognize, however, that it is responsible for such losses because they arise from PRTC's actions, and not simply because it owns the facilities. There is no basis for an indemnification clause that is tantamount to absolving PRTC of any liability associated with PRTC's negligence or willful misconduct simply because such malfeasance is related to the installation, maintenance, or repair of a collocator's equipment. The

Commission should require PRTC to revise the indemnification clause in Section 18.3.2.(B) so that it will not be interpreted to excuse PRTC for liabilities assumed under Section 18.3.2.(A).[5]

In addition, the Commission also rightly expressed concerns about Section 18.3.2.(E) of PRTC's tariff, which provides that certain claims PRTC may have against interconnectors (for causing PRTC's central offices to be in violation of a law, ordinance, or regulation) will survive the termination of service by a minimum of three years. In its Direct Case at 19, PRTC attempts to justify this survivability provision by claiming that a maximum term for survivability of PRTC's claims would be dictated by the applicable statutes of limitations. PRTC, however, fails to recognize that certain statutes of limitation may toll the time for filing certain claims in less than three years, which would be inconsistent PRTC's minimum three-year survivability provision. PRTC should not be allowed to circumvent applicable statutes of limitations by providing for a minimum term of survivability of claims.

PRTC also claims there was no need for comparable provisions stating the survivability of interconnectors' claims against PRTC because interconnectors should follow their own policy about whether to pursue causes of action against PRTC. Direct Case at 20. If, as PRTC suggests, interconnectors are free to follow their own policies with respect to pursuing claims against PRTC after termination of service, then PRTC's tariff should either say so explicitly or eliminate any reference to the survivability of claims by PRTC against interconnectors. By providing for the survivability of PRTC's claims but not the survivability of the interconnectors' claims, one might

[5] PRTC claims that its tariff rates would have to be revised to reflect increased risks in exchange for assuming greater liability. Direct Case at 19. As noted above in Part III of this Opposition, PRTC's proposed cost of capital already overstates its risks. Under the tariff as it is currently worded, PRTC would essentially assume no risk of liability at all.

interpret PRTC's tariff to preclude the latter. Because such an interpretation appears inconsistent with PRTC's intention, the tariff should be modified.

B. PRTC's Equipment Frame Layout Requirement Can Be Abused.

In ¶¶ 98-101 of the Investigation Order, the Commission expressed concerns about PRTC's requirement that requesting interconnectors provide an "equipment frame layout description," which PRTC may review for 30 days prior to allowing interconnection. PRTC defends this requirement by claiming that the information required is necessary for and will in fact expedite the installation process. Direct Case at 22-23.

While this information may be necessary to ensure proper installation, there are no provisions to ensure that PRTC does not abuse this requirement by using it to inhibit companies from seeking expanded interconnection. The tariff contains no standards that PRTC must follow in deciding whether to accept a requesting interconnectors' equipment frame layout description, and while the tariff states that PRTC will give an explanation when it rejects an equipment frame layout description, there are no procedures to verify that explanation or to appeal the rejection. In short, PRTC would have complete discretion under its tariff to accept or reject an equipment frame layout description, and with this discretion, PRTC would be free to delay or even deny collocation.

The Commission should require PRTC to modify the equipment frame layout requirement to constrain PRTC's discretion in rejecting descriptions provided by requesting interconnectors. The tariff should spell out the precise standards by which PRTC will review the descriptions, a procedure to verify PRTC's decisions, and a procedure to expedite review of amended descriptions after an initial rejection. In addition, it could spell out penalties for PRTC in the event that PRTC unreasonably rejects an equipment frame layout description.

C. PRTC Should Be Required To Accept LOAs.

In response to ¶ 91 of the Investigation Order, PRTC states that it does not accept letters of agency ("LOAs") for DS1 and DS3 access services, and that it will apply the same policy to interconnectors' customers for ordering and billing purposes. Direct Case at 20-21. PRTC, however, fails to comply with the Commission's order to "explain why it does not accept this practice." Although PRTC has demonstrated that there is no disparate treatment between special and switched access services and interconnectors' customers, PRTC has yet to explain why it refuses to accept LOAs at all.

LOAs have become standard industry documents, and PRTC should be required to accept them unless it can provide a compelling reason not to do so. As the Investigation Order (at ¶ 90) reflects, the tariffs of Bell Atlantic and Ameritech both state that they will accept LOAs from interconnectors' customers. PRTC's refusal to accept LOAs raises competitive concerns because absent an LOA, customers must contact PRTC directly to designate interconnectors as their agents for billing and ordering purposes, thereby giving PRTC an unfair opportunity to influence the customers' decisions.

D. PRTC Has Not Justified Its Refusal To Specify Time Intervals for Installation, Maintenance and Repair of Interconnector-Designated Equipment.

Although ordered to provide time intervals for installation, maintenance and repair of collocation equipment (Investigation Order at ¶¶ 101 and 108), PRTC has refused to do so claiming that it has no customers upon which to base such information. Direct Case at 29. PRTC also states that such intervals would not be "necessarily appropriate" because each collocator is different. Direct Case at 29.

PRTC's feigned inability to prescribe unified standards for all collocators is belied by its statement that "PRTC will provide service to the interconnector within the same interval that PRTC provides for itself." Direct Case at 28. This statement is distilled from other more extensive statements made by PRTC in the arbitration proceeding with KMC before the Telecommunications Regulatory Board of Puerto Rico:

> To be certain, PRTC and KMC are entering a new world of network unbundling and interconnection. PRTC will be interconnecting with a number of new entrants, and PRTC will be provisioning elements and services it has never before provided at once to multiple carriers. In this environment, <u>PRTC does not wish to establish certain performance standards for its relationships with some carriers and entirely different standards for its relationships with others.</u> . . .
>
> Accordingly, PRTC will provide KMC with service that is the same or better than that which PRTC provides to itself, to its affiliates, and to other interconnectors. PRTC requires simply that KMC give standard notice of its ordering needs and identify promptly any maintenance or quality issues. <u>In addition, PRTC offers to supply regular reports to KMC detailing the service intervals provided by PRTC.</u> With that information, KMC will be in a position to monitor PRTC's provisioning of its interconnection services.[6]

To the extent that PRTC proposes to comply with the time intervals that it imposes upon itself (which according to its statement in the arbitration proceeding will be regularly reported), PRTC should be able to state those intervals in its tariff. In addition, based on PRTC's statements in the arbitration proceeding, PRTC apparently is able and was willing to establish standard maintenance

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[6] Response of Puerto Rico Telephone Company at 44, filed with the Telecommunications Regulatory Board of Puerto Rico in "In the Matter of KMC Telecom, Inc., Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) and the Puerto Rico Telecommunication Act of 1996, Chapter III, Article 5(b), regarding Interconnection Rates, Terms and Conditions with Puerto Rico Telephone Company," Docket No. 97-0022-AR (February 28, 1997) (emphasis added). An excerpt of this response is attached as Exhibit A.

and repair response intervals for all carriers, and it is not clear why PRTC has changed its mind in its Direct Case (at 29).

E. PRTC Should Not Block Access of Interconnectors' Outside Contractors

In response to ¶ 104 of the Investigation Order, PRTC states that, with respect to maintenance and repair of its own equipment, PRTC will rely on its own employees, or when the problem cannot be solved by the employees, the original vendor. Direct Case at 25. PRTC further suggests that the same policy should apply to interconnectors. Direct Case at 26. Citing Section 18.3 of its proposed tariff, PRTC also stated that interconnectors asking PRTC employees to work with unfamiliar equipment will be charged for training costs. Direct Case at 26.

This proposal is unreasonable, however. PRTC appears to allow interconnectors to use outside contractors for installing equipment and for maintenance of equipment unfamiliar to PRTC's employees, but interconnectors must use PRTC's employees for maintenance of equipment with which PRTC's employees are familiar. It is not clear why, if PRTC is willing to allow access for outside contractors in the former situation, PRTC is unwilling to give access to outside contractors in the latter situation.[7] Since PRTC allows some use of outside contractors, interconnectors should be free to use outside contractors whenever it is economically and technically in their interests. Interconnectors should not be forced to rely on PRTC's employees, who may not be as efficient or proficient as the interconnectors might wish, for maintenance or repair of interconnector-designated equipment.

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[7] PRTC is not allowed to charge for training when its employees maintain equipment with which they are familiar. Expanded Interconnection Memorandum Opinion and Order, CC Docket No. 91-141, 9 FCC Rcd. 5154, 5172-73 (July 25, 1994).

F. PRTC Should Monitor Central Office Equipment and Notify Interconnectors of the Need for Repairs or Maintenance.

In response to ¶ 109 of the Investigation Order, KMC submits that interconnectors with PRTC could not adequately monitor the operation of their equipment in the central office space without notification by PRTC of any maintenance problems. Absent notification by PRTC interconnectors would only learn of the need for repairs from their customers, but in such circumstances, that notification would only be after a malfunction has already occurred. Prompt notice by PRTC would allow interconnectors to minimize such disruptions and could prevent additional damage to equipment.

PRTC should monitor equipment in its central offices and notify interconnectors of the need for repairs. PRTC is in the best position to know the status of its own central offices. They are staffed by PRTC's own employees and house PRTC's own equipment. Unlike residential customers, the number of interconnectors will be relatively small, and PRTC will incur very little if any incremental costs in monitoring the interconnectors' equipment and notifying them of the need for maintenance or repair.

Moreover, such monitoring by PRTC would benefit PRTC's customers as well as customers of CLECs. The telecommunications network is used by all consumers, whether they are customers of PRTC or of a CLEC. If one part of the network fails, the quality and serviceability may diminish for all. Alarm monitoring and trouble reporting by PRTC is therefore in everyone's interests, and PRTC should cooperate in this effort without restriction.

As PRTC states in its Direct Case at 30, however, PRTC's proposed tariff currently requires such notification only if the interconnector agrees to allow PRTC to maintain its equipment. An interconnector that chooses to perform its own regular maintenance activities, however, would not get the benefit of PRTC's notification of the need for repairs in emergency situations. PRTC should not be allowed to tie its obligation to notify interconnectors of the need for repairs to PRTC's maintenance service.

VI. The Commission Should Reopen These Proceedings when PRTC Obtains More Experience with Expanded Interconnection.

PRTC in numerous parts of its Direct Case has failed to respond directly to the Commission's requests for information based upon its claim that it currently has no expanded interconnection customers upon which to base the information. For example, PRTC has cited this reason to avoid providing the following information as ordered by the Commission:

- An explanation and a list of materials for which PRTC will charge virtual collocation customers (Direct Case at 2);
- A generally available tariff that identifies the cross-connect element at study-area-wide averaged rates (Direct Case 2-3);
- Identification of interconnector-designated equipment that PRTC assumes will occupy the floor space for which it develops direct costs (Direct Case at 11); and
- Identification of time intervals for installation of DS1 and DS3 special and switched access services. (Direct Case at 24).

While direct information on these matters probably could not be obtained without actual customers, these items seem to cover information for which a company could make a reasonable prediction. In fact, telephone companies make similar forecasts, plans and estimates as part of their day-to-day operations.

Nevertheless, rather than compel PRTC to make predictions that it is apparently uncomfortable or unwilling to make, the Commission should condition its ruling in this proceeding